

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

FEBRUARY 2015 REPORT

Summary. This report reviews the February 2015 developments relating to human rights in Myanmar. Relatedly, it addresses the interchange between Myanmar’s reform efforts and the responses of the international community.

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I. International Community and Sanctions

Around 2,000 workers employed by three garment factories in the Shwepyithar Industrial Zone went on strike earlier in the month to demand an approximately US\$29 raise in their monthly wages.¹ Certain unidentified foreign embassies filed complaints in response to the strike on behalf of foreign businesses, although the nationality of the embassies and the exact nature of their complaints could not be revealed, according to the Deputy Minister for Employment and Social Security.²

Australian member of parliament Luke Simpkins spoke out against continuing human rights violations in Myanmar and vowed to support Karen ethnic armed groups in their ongoing conflict with Myanmar's government.³ According to Australia's Fairfax newspaper group, Simpkins, a member of the Liberal Party of Australia, made an unauthorized crossing into Myanmar where he met with members of the Karen National Defense Organization.⁴

Fighting in northern Shan State between government and rebel forces increased throughout the month of February.⁵ Reports indicate that, since February 9, as many as 100,000 people have been displaced and have fled across the Chinese border in search of safety.⁶ More recent reports from an ethnic Kokang alliance spokesman allege that the "vast majority" of civilians in Kokang region have fled towns and villages for fear of violence, including rape, at the hands of government troops; if true the number of displaced persons could now exceed 150,000.⁷

A report by Amnesty International entitled, "*Open for Business? Corporate Crime and Abuses at a Myanmar Copper Mine,*" suggests that Ivanhoe Mines (a/k/a Turquoise Hill Resources), a Canadian mining venture previously operating in Myanmar as part of a joint venture at the Monywa mine, may have violated a number of U.S., U.K. and Canadian sanctions from 2003-2004, specifically by making sales of copper to restricted persons in Myanmar.⁸ The report accuses Ivanhoe of lying to the public about the nature of its sales.⁹ In particular, the report alleges that while Ivanhoe claims to have sold copper exclusively to the Japanese company Marubeni, it in fact made numerous sales to military-affiliated groups in Myanmar.¹⁰ Furthermore, according to the report while Ivanhoe claims to have divested its 50 fifty percent stake in the Monywa mine to an "independent third party trust" in 2007, communications after that date raise questions about the Canadian company's continued involvement including alleged negotiations with Chinese company Wanbao, which currently heads development at the controversial Letpadaung copper mine.¹¹

On February 17, the Myanmar Red Cross Society called on warring parties in northern Shan State to guarantee the safety of its personnel after two of its volunteers were injured when a convoy carrying civilians and journalists was attacked in Kokang Special Region.¹² Ethnic Kokang and Palaung rebel groups have denied responsibility, although the Red Cross has stated that the attack did not take place near the location of any Myanmar national army units.¹³

United States based Johns Hopkins University cancelled an international relations and comparative politics program with Yangon University after it was unable to renew its memorandum of understanding with the Myanmar Education Ministry.¹⁴ The Ministry was allegedly unwilling to provide the same guarantees of academic freedom, self-autonomy and subject cooperation as had been provided in the previous memorandum.¹⁵

On February 25, the United Nations High Commissioner for Human Rights, Zeid Ra'ad al-Husseini warned that recent developments in Myanmar, including with respect to the treatment of minorities, freedom of expression and the right to peaceful protest, had called into question the direction of Myanmar's reform efforts.¹⁶

In its most recent report on the annual state of the world's human rights, Amnesty International noted that the situation of Muslim Rohingya had "deteriorated" in 2014, citing ongoing discrimination in law and practice among a litany of other wrongs suffered by the Rohingya.¹⁷ In addition, the report cited a variety of other failures and concerns in Myanmar including: (i) continued armed conflict in Kachin and northern Shan State resulting in continued violations of international humanitarian and human rights law (including unlawful killings and torture), (ii) severe restrictions on the freedom of expression and right of peaceful assembly and (iii) the failure of Myanmar to adopt the UN Convention against Torture, despite previous promises by the Ministry of Foreign Affairs to do so.¹⁸

On February 26, Michael Posner, the U.S. Assistant Secretary of State for Democracy, Human Rights and Labor, testified before the Tom Lantos Human Rights Commission regarding the current situation in Myanmar.¹⁹ Posner praised Myanmar's reform efforts in the fields of human rights and rule of law, expressing optimism about Myanmar's future while noting that further reform was needed.²⁰ Posner recommended the U.S. maintain its current approach towards Myanmar, including in respect of existing sanctions and presidential orders. Posner also highlighted the current government's failure to permit the United Nations High Commissioner for Human Rights to set up an office in Myanmar to monitor the rights situation during his testimony.²¹

II. Civil and Political Rights

A. Election-Related Laws and Acts

On February 10, President Thein Sein approved a referendum to be held this year on amendments to the constitution.²² The referendum could be held as early as this May; however, it remains unclear what amendments to the constitution will be considered in the vote.²³ Aung San Suu Kyi approved the referendum as her party, the National League for Democracy ("NLD"), has been promoting changes to the Myanmar constitution.²⁴ Hundreds of people protested in Yangon on February 11, rallying against the government's decision to allow people without citizenship to take part in the constitutional amendment referendum.²⁵ This follows Parliament's approval of a proposal by President Thein Sein to allow people with temporary identification "white cards" to take part in the referendum.²⁶

B. Press and Media Laws/Restrictions and Freedom of Association

Student protests in favor of amendments to the national education law continue to take place across the country.²⁷ A draft list of amendments was formally submitted to Parliament on February 18.²⁸ The main proposed amendments are: the decentralization of decision-making powers, permission to form student and teachers' unions and the introduction of mother tongue-based curricula in ethnic areas.²⁹

Naing Htay and Myo Min Min, who allegedly led a labor strike in Yangon's Shwepyithar industrial zone, are now facing public disturbance charges.³⁰ They have been charged under Article 505(b) of the Myanmar Penal Code, according to which it is a criminal offense to act with: *"intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offense against the State or against the public tranquility."*³¹

C. Miscellaneous

On February 19, Myanmar's Upper House passed the Population Control Bill, a piece of controversial legislation that aims to establish government control over women's reproductive rights and grants authorities the power to identify geographic regions where women will be encouraged to have only one baby every three years.³² The bill was passed in the Upper House, which is dominated by the ruling Union Solidarity and Development Party ("USDP") and a bloc of military lawmakers, with 154 votes in favor and 12 opposed.³³ The bill is in the most advanced stage among a package of four bills dubbed the "Race and Religion Protection" legislation, which the government has been drafting after coming under pressure from an influential group of nationalist Buddhist monks, the Ma-Ba-Ta, who have been accused of spreading anti-Muslim hate speech and whipping up nationalism.³⁴

Deputy Attorney General Tun Tun Oo said families in areas considered by the government to be too poor to sustain certain population growth rates would have to comply with the new rules on childbirth.³⁵ "The bill has no restriction for those who can afford to raise [their children]," he added. Khin Maung Yi, chairman of the Upper House Bill Committee and a USDP member, said, "We drafted this bill together with concerned organizations in line with international norms. The World Health Organization does suggest a 36-month-period of birth spacing. But there is no problem if this provision is not followed—there is no prohibition or penalty."³⁶

Opposition lawmakers and human rights activists, however, criticized Upper House support for the bill, saying that it violated women's basic rights, while the vaguely-worded legislation would give local authorities broad powers to apply population control measures in areas of ethnic or religious minorities.³⁷ Aung Kyi Nyunt, an Upper House lawmaker with the NLD, said the bill violated citizen's individual rights as stipulated in the Constitution and contravened the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"), to which Myanmar is a party.³⁸ He said he believed the Population Control Bill violated CEDAW Article 16(e), which states that women have full rights "to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."³⁹

In December 2014, a group of 180 civil society groups voiced their concern over the "Race and Religion Protection" bills.⁴⁰ A brief legal analysis by the groups said the Population Control Bill would violate CEDAW and the Convention on the Rights of a Child, while it warned that children born not in line with the rules of the bill would be at risk of not being registered by local authorities.⁴¹ "The entire draft laws, including the definitions, are not clear, and could be viewed as being designed to target the country's minority and ethnic populations," the NGOs also said. The Population Control Bill, some activists believe, could also be an attempt at controlling the Muslim majority areas of northern Rakhine State, where approximately one million stateless

Rohingya live.⁴² In 2013, local authorities in the area tried to introduce a two-child limit in Muslim-majority areas, claiming that the impoverished region had too high population growth rates.⁴³

III. **Constitutional Reform**

Earlier this year there had been some positive momentum toward constitutional reform, with government officials announcing their intention to review constitutional amendment suggestions and hold a national referendum on an amended Constitution this May.⁴⁴ However, many officials, including members of the Union Election Commission (“UEC”), had been unsure whether a constitutional referendum would actually occur, as the key logistics of the exercise presented a sizable obstacle to be overcome in a short time-frame.⁴⁵

On February 11, 2015, President Thein Sein approved a law allowing the referendum on changes to the Myanmar Constitution.⁴⁶ Thein Nyunt, a lower house Member of Parliament, stated that the UEC will soon be expected to announce an official date for the referendum, likely to be in May of this year.⁴⁷ Still, others believe that the law's enactment by itself will not ensure that such a vote will take place this year. Jen Psaki, speaking for the United States Department of State, said that they were aware of efforts by the Myanmar government to hold a referendum, but that it remained unclear whether this would occur and what subjects it would cover.⁴⁸ Similarly, Richard Horsey, a Yangon-based independent political analyst, said that the cost and logistics made a referendum unlikely in the coming months, but that it could be held at the same time as the general election.⁴⁹ He also said it was not clear yet if such a referendum would focus on the contested articles.⁵⁰

IV. **Governance and Rule of Law**

As described further in Section VII.B, the Kokang Self-administered Zone was placed under martial law following an outbreak of violence in the region, the first exercise by President Thein of the power granted to him under the 2008 constitution since taking office.⁵¹ Given the situation, the NLD's Aung San Suu Kyi, leader of Parliament's rule of law committee, supported the decision, although she also cautioned the military to abide by “law and order.”⁵² On the other hand, political analyst Sithu Aung Myint expressed his concern that handing administrative power – including the powers to convene military court and administer the death penalty for a number of offences – over to the military could potentially lead to human rights violations.⁵³ This is reflective of overall mixed reactions to the decision to impose martial law, with critics fearful of the military acting with impunity and proponents recognizing the necessity to respond to the increasing regional conflict with force.⁵⁴

V. **Political Prisoners**

Amnesty International and Human Rights Watch released a joint open letter to the Myanmar government committee reconstituted to deal with “prisoners of conscience affairs.”⁵⁵ The 28-member committee was formed in January of this year to replace the 19-member Committee for Scrutinizing the Remaining Prisoners of Conscience, which met only three times in 2014.⁵⁶ The joint open letter calls for the resolution of remaining prisoner-of-conscience cases,

and for the Committee to be inclusive, independent, transparent and designed to tackle growing numbers of politically motivated arrests.⁵⁷ The organizations' joint letter comes amidst concerns that the Committee could become another "toothless committee set up by the government to deflect criticism and create a smokescreen."⁵⁸

According to the Assistance Association for Political Prisoners ("AAPP"), many political prisoners continue to suffer after their release, as thousands of former political prisoners experience ongoing financial hardship and poor health.⁵⁹ The group has accused the government of failing to provide any support to former political prisoners, many of whom have been released since 2011, and states that post-release ailments and suffering occur as a result of abuse inflicted on the prisoners during their incarceration, including physical and mental torture in a majority of reported cases.⁶⁰

Myanmar's political imprisonment record was also raised in a recent warning by the United Nations human rights chief that the country's jailing of critics and quashing of peaceful protests – in spite of promises to stop – among other human rights offences, is setting back Myanmar's political reforms.⁶¹ United Nations High Commissioner for Human Rights, Zeid Ra'ad al-Hussein added, "Myanmar had promised to end the era of political prisoners, but now seems intent on creating a new generation by jailing people who seek to enjoy the democratic freedoms they have been promised."⁶²

VI. Economic Development

A. Developments in the Legal Framework of Economic Development

Myanmar's first official stock exchange remains slated to open in October of this year, with Maung Maung Thein, the country's Deputy Minister of Finance, recently stating that the process is "75 percent complete."⁶³ According to Myanmar's Securities and Exchange Commission, more than 100 private security companies have submitted bids for service provider licenses.⁶⁴ The Commission has announced that it will grant four kinds of service licenses (for underwriters, dealers, brokers and consultants), with different capital requirements for each.⁶⁵ Maung Maung Thein estimates that there will be at least ten companies that list initially.⁶⁶

Myanmar is in the process of combining two investment laws – the Myanmar Citizens Investment Law (enacted in July 2013) and the Foreign Investment Law (enacted in November 2012) – into a single law known as "The Investment Law of the Republic of the Union of Myanmar," which was drafted in cooperation with the World Bank's International Finance Corporation ("IFC").⁶⁷ A public comment period is scheduled to run until March 26.⁶⁸ The IFC regards the new law, if enacted, as leveling the playing field for both local and foreign investors.⁶⁹

B. Developments in Foreign Investment and Economic Development Projects

In mid-February, the Myanmar Investment Summit was held in London, with the location an illustration of the importance of the United Kingdom to Myanmar's economic growth.⁷⁰ Since the suspension of European Union sanctions against Myanmar in April 2012, U.K. exports to Myanmar have increased by nearly 240% and about 40-50 U.K. firms have a presence in

Myanmar, making the U.K. the country's fifth largest investor and accounting for approximately 7% of the country's total foreign direct investment.⁷¹ China tops the list, followed by Thailand, Hong Kong, and Singapore.⁷²

In February, Myanmar's opposition leader Aung San Suu Kyi once again raised concerns about the country's judicial system, including whether legal and contractual issues can be addressed by understaffed and underfunded courts.⁷³ She said that Myanmar "may be able to come up with very nice-sounding economic policies, but without the rule of law, nothing will be achieved."⁷⁴

C. Land Seizures

Little of note has occurred on the land seizure front this month. The major headline concerns the Michaungkan land grab, discussed in our previous reports. On February 19, fourteen activists from Michaungkan, a suburb east of Yangon, were sentenced to six months' imprisonment for leading the sit-in at the gates of Yangon's city hall.⁷⁵ A week later, police evicted the entire group of Michaungkan land grab protestors from their rally camp.⁷⁶ Another fourteen activists, as well as four street vendors, were arrested in the eviction raid.⁷⁷ This is the second time this rally camp has been cleared, the last time occurring in December of last year.⁷⁸

Prospects for compensation for seized lands continue to vary. A newly proposed construction project in Karen State will result in confiscation of rubber farms.⁷⁹ A State minister agreed that locals should be compensated for this land.⁸⁰ In Yathedaung Township, however, one Member of Parliament frankly admitted that returning confiscated lands to the dispossessed would be impossible; these lands were taken during military rule, and they now have government buildings on them.⁸¹ No mention of compensation was made.⁸² In Kyauk Phyu Township, farmers are still demanding compensation for lands that were seized for the installation of a gas pipeline.⁸³ In an attempt to assuage doubts surrounding compensation, authorities have said that compensation is "being processed" – and some farmers have been paid – however, as compensation for all affected farmers is still forthcoming, patience appears to be growing thin.⁸⁴

VII. Ethnic Violence

A. Violence Against Muslims

In mid-February, the government announced that temporary registration certificates, commonly known as white cards, would be revoked on May 31st.⁸⁵ White cards, the majority of holders of which are Rohingya Muslims, provide holders with certain voting rights and certain restricted health and education services.⁸⁶ The Myanmar parliament voted in early February to grant white cards holders the vote in a possible constitutional referendum; a move which was protested by Buddhists.⁸⁷ Shortly after the protest, the government announced its plan to revoke the white cards.⁸⁸ Although the government has indicated that the cards would be revoked in a "fair and transparent manner" by local officials, it offered no explanation of what might replace them.⁸⁹

B. Violence Between the Union Government and Ethnic Rebel Groups

Heavy fighting between the government army and the Myanmar National Democratic Alliance Army (“MNDA”) in the Kokang region over control of the Laukkai Township broke out on February 9, causing tens of thousands to flee to China.⁹⁰ As of the end of February, Chinese aid workers estimated that the refugee population on the Chinese side of the border had reached around 100,000.⁹¹ On February 18, Laukkai Township was placed under a three-month period of martial law and is thus currently being administered by the government army.⁹² Government statements have indicated that dozens of soldiers and rebels were killed in the fighting, but remained silent as to civilian deaths.⁹³ Rebels have claimed that between 50 and 100 civilians were killed in the fighting, and in late February, graphic photographs depicting the cremation by aid workers of large numbers of civilian bodies emerged amid accusations by Kokang rebels that the government is massacring unarmed civilians.⁹⁴ The MNDA has accused the government of encouraging the return of refugees under false assurances of safety, alleging that they have found that the police and army kill people who return as they suspect them of being rebels.⁹⁵ The MNDA additionally warned the government that their armed forces will take action against those persons who kill civilians.⁹⁶

In addition, clashes between the army and the Ta’ang National Liberation Army (“TNLA”) in early February resulted in casualties for both the army and the TNLA.⁹⁷ According to the TNLA, the conflict resulted in the deaths of nine army soldiers and one TNLA soldier, while the *The Mirror*, a state-run newspaper, claimed that ten members of the TNLA and five army soldiers were killed.⁹⁸ The cause of the conflict is also disputed, with the government claiming it arose out of the detainment by TNLA forces of two villagers who had refused to pay taxes to the group and the TNLA claiming it arose out of government retaliation for the TNLA’s detention of two poppy farmers while the TNLA was attempting to clear poppy farms.⁹⁹

C. Peace Talks

On Union Day (February 12), President Thein Sein presented ethnic leaders with a pledge reaffirming support for the nationwide ceasefire.¹⁰⁰ Leaders of the Karen National Union (“KNU”), the Democratic Karen Benevolent Army, a small Karen splinter group and the Shan State Army-South all signed the pledge.¹⁰¹ However, the remaining ethnic groups that form the Nationwide Ceasefire Coordination Team (“NCCT”) declined to sign the pledge, apparently because they felt it lacked specifics on the government’s commitment to the ceasefire process.¹⁰²

KNU leaders indicated that they plan to hold bilateral meetings with the government and army in order to improve ceasefire conditions in Karen State, noting that the move entails distancing them from the other groups involved in the nationwide ceasefire process.¹⁰³ Mutu Say Poe, the chairman of the KNU, noted that the KNU was resorting to bilateral ceasefire talks as the nationwide ceasefire negotiations between the government and the NCCT had produced no results in past months.¹⁰⁴ Chairman Poe further went on to criticize the NCCT and to accuse some ethnic groups of obstructing progress on a nationwide ceasefire by issuing demands that were unnecessarily complicating the process.¹⁰⁵

However, despite the recent lack of major developments in the peace discussions, the government’s union Peacemaking Work Committee will meet with the NCCT in mid-March for the seventh round of official talks.¹⁰⁶

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